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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,076	03/26/2004	Jonathan Wemple	I-22738	8068
46582	7590	10/06/2005	EXAMINER	
MACMILLAN, SOBANSKI & TODD, LLC			SICONOLFI, ROBERT	
ONE MARITIME PLAZA - FOURTH FLOOR				
720 WATER STREET			ART UNIT	PAPER NUMBER
TOLEDO, OH 43604			3683	

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/811,076	
Examiner	Art Unit Robert A. Siconolfi	
	3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 21 July 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-5,7-9,11,12,17-21,23-25,27 and 28 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 1-5,7,17-21 and 23 is/are allowed.

6) Claim(s) 8,9,11,12,24,25,27 and 28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

## DETAILED ACTION

1. Amendment filed on has been received.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8,9,11,12,24,25,27, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

On page 30 lines 8-16 of the specification, it is stated that the elected embodiment provides a generally uniform force regardless of the amount of wear. Applicants have argued that the amount of force changes as the device wears. It is unclear which is correct. A decreasing spring rate does not mean the force applied is lower (for instance the displacement could increase).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8, 9, 12, 24, 25, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Evans (U. S. Patent no. 5,549,181).

Evans discloses a caliper 20, friction pads 15,16, anchor bracket 12,13, spring 30 with a first portion 33 and a second portion 33 that yields with wear of the brake pad (see column 6 lines 63-67).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11, 23, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of Aoyagi.

Evans is relied upon as above. Evans does not disclose a portion of the spring spaced apart from a friction pad surface. Aoyagi teaches a portion of the spring spaced apart from a friction pad surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a portion of the spring spaced apart from a friction pad surface as taught by Aoyagi in the device of Evans in order to allow some movement before the spring permanently deforms.

8. Claims 1-5,7,17-21, and 23 are allowed..

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Siconolfi whose telephone number is 571-272-7124. The examiner can normally be reached on M-F 10 am-3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on (571) 272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
10/3/05  
Robert A. Siconolfi  
Primary Examiner  
Art Unit 3683

RS